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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

MITCHELL D. KISHINEFF and
DEBRA L. KISHINEFF,

Plaintiffs,

vs.

THURMAN L. MCCLENDON; S&H
TRUCKING, INC; and DOES 1–10,

Defendants.

CV- _____

NOTICE OF REMOVAL

Defendants Thurman McClendon (“McClendon”) and S&H Trucking, Inc. (“S&H Trucking”), pursuant to 28 U.S.C. §§ 1441 and 1446, hereby give notice of the removal to this Court of the case titled *Mitchell D. Kishineff and Debra L. Kishineff v. Thurman L. McClendon; S&H Trucking, Inc.; and Does 1–10*, filed in the Thirteenth Judicial District Court, Yellowstone County, Montana, Cause No. DV 21-0375. The requirements for removal are met.

1. On or about March 31, 2020, Plaintiffs Mitchell D. Kishineff and Debra L. Kishineff filed this action in the Thirteenth Judicial District Court, Yellowstone County, Montana. The Complaint names the following defendants: Thurman L. McClendon, S&H Trucking, Inc., and Does 1–10.

2. This action arises out of an accident that allegedly occurred on or about April 3, 2018. Plaintiffs allege that Mitchell D. Kishineff was driving a tractor-trailer eastbound on I-90 near Billings on an icy roadway. Compl. ¶ 4. Plaintiffs allege that Mr. Kishineff was in the left eastbound lane when he saw a tractor-trailer approaching from behind in the right eastbound lane. *Id.* Plaintiffs allege Mr. Kishineff moved from the left to the right lane and that the tractor-trailer he had seen behind him, driven by Defendant McClendon and owned by S&H Trucking, struck his tractor-trailer from behind. *Id.* Plaintiffs allege that Plaintiff Debra L. Kishineff was a passenger in the tractor-trailer driven by Mr. Kishineff and that both Mr. and Ms. Kishineff suffered injuries and property damage. *Id.* ¶¶ 10–11. Plaintiffs have asserted claims for negligence against McClendon and S&H Trucking.

3. S&H Trucking and McClendon were both served on April 23, 2021. A notice of removal must be filed within thirty days after the named defendant receives a copy of the complaint, through service or otherwise. 28 U.S.C. § 1446(b). The removal period does not begin to run until the defendant is

properly served or until the defendant waives service. *Murphy Bros, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999). A named defendant's 30-day time period to remove is triggered by simultaneous service of the summons and complaint, or receipt of the complaint after and apart from service of the summons, but it is not triggered by "mere receipt" of the complaint without any formal service. *Murphy Bros, Inc.*, 526 U.S. at 347–48.

4. The above described action is a civil action of which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332(a)(1). The action involves citizens of diverse states, and an amount in controversy in excess of \$75,000.00, exclusive of interest and costs. It may be removed to this Court pursuant to 28 U.S.C. § 1441.

5. Venue is proper in the Billings Division of the United States District Court for the District of Montana, pursuant to 28 U.S.C. § 1441(a) and Rule 1.2 of the Local Rules of Procedure for the United States District Court for the District of Montana. This action is being removed from the state court wherein it was originally filed in the Thirteenth Judicial District Court, Yellowstone County, Montana.

6. Pursuant to 28 U.S.C. § 1446(a), attached hereto as Exhibit A are all process, pleadings, orders, and other papers and exhibits filed in the state action.

7. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is timely filed.

8. Concurrent with the filing of this Notice of Removal, a Notice of Filing Notice of Removal pursuant to 28 U.S.C. § 1446(d) will be filed with the Clerk of Court for the Thirteenth Judicial District, Yellowstone County, Montana, and Defendants will give written notice to all adverse parties.

Complete Diversity Exists as to All Parties

9. Plaintiffs allege that they are residents of Delta, British Columbia, Canada. Compl. ¶ 1. Plaintiffs are citizens of Canada for diversity jurisdiction purposes.

10. Plaintiffs allege that McClendon is a resident of Tennessee. *Id.* ¶ 2. Defendant McClendon is a citizen of Tennessee for diversity jurisdiction purposes.

11. A corporation is deemed to be a citizen of both the state of its incorporation and the state where it has its principal place of business. 28 U.S.C. § 1332(c)(1); *Hertz Corp. v. Friend*, 559 U.S. 77, 92–93 (2010).

12. Plaintiffs allege that S&H Trucking is organized under the laws of a State other than Montana and has a principal place of business in the State of Georgia. *Id.* ¶ 3.

13. S&H Trucking is a Georgia corporation with its principal place of business in Rossville, Georgia. *See* Georgia Secretary of State Business Details for

S&H Trucking, Inc, attached as Exhibit B. Defendant S&H Trucking is a citizen of Georgia for diversity jurisdiction purposes.

14. There is complete diversity of citizenship among the parties to this action.

Amount in Controversy Exceeds \$75,000

15. Plaintiffs have not stated a specific amount of damages in the Complaint, but the allegations and demands set forth in Plaintiff's Complaint demonstrate that the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

16. Plaintiffs have alleged special and general damages, including medical expenses, physical and emotional pain and suffering, loss of established course of life, loss of enjoyment, lost earnings and lost earning capacity, and damage to and loss of use of property.

17. Plaintiffs have confirmed that the amount in controversy requirement is met for purposes of federal jurisdiction.

DATED this 13th day of May, 2021.

CROWLEY FLECK PLLP

By /s/ Constance Van Kley

Ian McIntosh

Constance Van Kley

Attorneys for Defendants